

as Executor and Factor, appointed by the Lords in the Estate of such a Person for the Use and Behoof of such a Person and all that have or may have Interest: Unless some other Person having a Title offer to confirm and put in the Clerk's Hand a just and full Copy of the Testament and all Acts he may afterwards make to it within 3 Months after the Confirmation, under the Penalty of a Mulet to be modified by the Lords. 3. He hath Power to grant Leases or Leases to continue while the Estate remains under the Inspection of the Lords, and for the Space of a Year longer. He is to pay his Intrusions such Person or Persons and at such Times, as the Lords in the Faculty or otherwise appoint: And is liable for Annual Rent of all Rents and Profits he recovers, or by Diligence might have recovered, from the Time of a Year after the same became due: 4. He must give in to the Clerk before said once every Year a Scheme of his Accounts Charge and Discharge that all concerned may have Access to see examine and check them: And for failing to do so he is liable to such a Mulet as the Lords shall modify not under Half a Year's Salary. 5. Such a Factor failing in any Part of the Duties may be removed, without Prejudice to particular Certifications aforesaid. 6. He with the Controvers for his Fidelity must be bound jointly and severally and obliged for his observing the Rules abovementioned or that he shall otherwise be liable to in Law.

By the Canon Law, a Man or Woman may be put under Sequestration or Custody, when there is a Controversy or Suit depending whether he or she is married to that Person who commences the Suit: And this done least the Defendant should marry any other in the mean Time c. 14. X. de sponsal. et matrim.

Seck. 4 Of Exchange or Exambion.

Exchange, is a Contract by which any one Thing, except Money, is agreed to be given for another, according as the Parties find their Conveniency c. 5. §. 1. ff. de contrah. empt. c. 5. §. 1. ff. de prescrip. verb. This was the first most ancient and necessary Contract, introduced before the invention of Money, whereby People mutually bartered what they could spare and was less necessary to them, for what they wanted and stood more in need of. The Roman Law considers Exchange as a Contract without Form, and placed it among the Contracts which have no particular Name c. 5. §. 2. ff. de rer. permitt. c. 5. §. 1. ff. de prescrip. verb. For that in it we cannot make a Distinction of a Seller and a Buyer, or of a Price and Merchandize; both the one and the other hold

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Dring the Place at the same Time both of Seller of the Thing which he gives, and of Buyer of that which he receives. There is indeed a great Affinity betwixt the Contracts of Sale and Exchange, in the Rules touching Delivery, Warrantice, Changes in the Things treated of, Nullities, Eviction, Redhibition &c. But the Rules in a Sale relating to the Price, the Power of Redemption and others of the like Nature, are not applicable to Exchange.

This Contract without Delivery on one Side or other, produces no Action for Performance. l. 8. C. de rer. permitt. But it is perfected by Delivery made by one of the Parties, who thereupon has Right to demand what the other Party was bound to give in Counterchange l. 4. C. 5. l. 6. C. 600. So that the Author of Les Loix Civiles &c. (Tom. 1. Part. 1. Liv. 1. Tit. 3. pr.) mistaketh the Roman Law, when he asserts, that it doth not authorize any such Demand in that Case, but only to take back what was given. Not doth the Text that learned Men find in (l. 5. §. 1. ff. de prescrip. verb.) say any Thing to this Purpose: For there, as appears from the preceding § of that same Law, one has given in Exchange to another what was not his own, but belonged to a third Person, and so not having fulfilled his Part, had no Right to demand Performance from the other Party.

If either of the Things bartered, appear before Delivery to belong to some third Person, the other Party may refuse to accept of it, and retain what he was to give in Exchange for it. If it be evicted by the Vendor not after Delivery, the Contract becomes void, and the Party from whom it was evicted, hath Recourse to what he gave in Exchange; which he may recover even from singular or Successors for an evicted Cause. Nov. Lib. 5. Tit. 14. §. 1. Ver. Aut in Exambion.

Seck. 5.

The Policy of Insurance.

The Policy of Insurance, is a Contract whereby one for a premium or Price stipulated and paid in Hand, takes upon him the Peril of Ships, Goods, Houses, or any other Thing subject to Hazard, to the Value of that for which the Reward is received, in Case of Loss by Storm, Pirates, Fire &c. This Contract for saving harmless, called Insurance or Assurance, scarce known formerly (Pl. Grob. de f. B. & P. Lib. 2. Cap. 12. §. 3. q. 5.) the new practice as much as any whatever, seems to have been first introduced by Claudius Caesar Sweet. in Vit. Claudij. The Laws and Customs of several Trading Nations concerning Insurance agreeing in most Things and differing in few, may be seen in the 1. Vol. (Placatum flodandie, the Promissioe of Lewis

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